



# UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE  
United States Patent and Trademark Office  
Address: COMMISSIONER FOR PATENTS  
P.O. Box 1450  
Alexandria, Virginia 22313-1450  
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/890,335	04/08/2002	Gregor Cevc	266/035	9531

27500 7590 09/15/2005

PILLSBURY WINTHROP SHAW PITTMAN LLP  
ATTENTION: DOCKETING DEPARTMENT  
11682 EL CAMINO REAL, SUITE 200  
SAN DIEGO, CA 92130

EXAMINER

GANGLE, BRIAN J

ART UNIT PAPER NUMBER

1645

DATE MAILED: 09/15/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

09/890,335

Applicant(s)

CEVC ET AL.

Examiner

Brian J. Gangle

Art Unit

1645

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 1 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 08 April 2002.
- 2a) ☐ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-36 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☐ Claim(s) \_\_\_\_\_ is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☒ Claim(s) 1-36 are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)             | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)    | Paper No(s)/Mail Date. _____  |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date _____   | 6) <input type="checkbox"/> Other: _____                                    |

Art Unit: 1645

## DETAILED ACTION

### *Election/Restrictions*

Restriction is required under 35 U.S.C. 121 and 372.

This application contains the following inventions or groups of inventions which are not so linked as to form a single general inventive concept under PCT Rule 13.1.

In accordance with 37 CFR 1.499, applicant is required, in reply to this action, to elect a single invention to which the claims must be restricted.

Group I, claim(s) 1-24, drawn to a transdermal vaccine.

Group II, claim(s) 25-35, drawn to a method of vaccinating using the vaccine from Group I.

Group III, claim(s) 36, drawn to a method of using a transdermal carrier, a compound which induces cytokine or anti-cytokine activity, an antigen/allergen, or a low molecular weight chemical irritant for the preparation of a vaccine.

The inventions listed as Groups I-III do not relate to a single general inventive concept under PCT Rule 13.1 because, under PCT Rule 13.2, they lack the same or corresponding special technical features for the following reasons:

The technical feature linking groups I-II appears to be a transdermal vaccine comprising 3 components: 1. a transdermal carrier which is a penetrant suspended in an aqueous solvent, in the form of a minute fluid droplet surrounded by a membrane-like coating of one or several layers, 2. a compound which induces cytokine or anti-cytokine activity, and 3. an antigen/allergen.

However, Paul *et al.* (Vaccine Research, 4:145-164, 1995) teach a transdermal antigen delivery system comprising a transfersome (transdermal carrier composed of 170-200 $\mu$ m vesicles of ethanolic SPC and sodium cholate), lipid A (adjuvant), and BSA (antigen) (p. 148 paragraph 5).

Group III does not appear to require the technical feature of groups I and II. And/or language provides that the vaccine of Group III can comprise only a low molecular weight chemical irritant and thus does not require the technical feature of groups I and II.

Therefore, the technical feature linking the inventions of groups I-III does not constitute a special technical feature as defined by PCT Rule 13.2, as it does not define a contribution over the art.

Art Unit: 1645

This application contains claims directed to more than one species of the generic invention. These species are deemed to lack unity of invention because they are not so linked as to form a single general inventive concept under PCT Rule 13.1.

The species are as follows:

Group I:

Specie A: cytokines per se/compound inducing cytokine activity

Select a single molecule from claims 8/9.

Specie B: antigen

Select a single antigen, allergen or extract of compound from a pathogen or fragment or derivative thereof from claims 10-12, 14-15, and 19

Specie C: low molecular weight irritant

Select a single irritant, derivative, or combination thereof from claim 17.

Group II:

Specie A: cytokines per se/compound inducing cytokine activity

Select a single molecule from claims 8/9.

Specie B: antigen

Select a single antigen, allergen or extract of compound from a pathogen or fragment or derivative thereof from claims 10-12, 14-15, and 19

Specie C: low molecular weight irritant

Select a single irritant, derivative, or combination thereof from claim 17.

Art Unit: 1645

Applicant is required, in reply to this action, to elect a single combination of species (A, B, C) to which the claims shall be restricted if no generic claim is finally held to be allowable. The reply must also identify the claims readable on the elected species, including any claims subsequently added. An argument that a claim is allowable or that all claims are generic is considered non-responsive unless accompanied by an election.

Upon the allowance of a generic claim, applicant will be entitled to consideration of claims to additional species which are written in dependent form or otherwise include all the limitations of an allowed generic claim as provided by 37 CFR 1.141. If claims are added after the election, applicant must indicate which are readable upon the elected species. MPEP § 809.02(a).

The claims are deemed to correspond to the species listed above in the following manner:

Specie A: claim 8

Specie B: claims 10-12, 14-15, and 19

Specie C: claim 17

The following claim(s) are generic: 8, 10-12, 14-15, 17, and 19.

The species listed above do not relate to a single general inventive concept under PCT Rule 13.1 because, under PCT Rule 13.2, the species lack the same or corresponding special technical features for the following reasons: The above species share no common core structure or function.

Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 CFR 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the application. Any amendment of inventorship must be accompanied by a request under 37 CFR 1.48(b) and by the fee required under 37 CFR 1.17(i).

Art Unit: 1645

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Brian J. Gangle whose telephone number is (571) 272-1181. The examiner can normally be reached on M-F 8-4:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lynette Smith can be reached on (571) 272-0864. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Applicant is advised that the reply to this requirement to be complete must include an election of the invention to be examined even though the requirement be traversed (37 CFR 1.143).

Brian Gangle  
9/2/2005

BG

*Patricia A. Duffy*  
PATRICIA A. DUFFY  
PRIMARY EXAMINER